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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,429	02/26/2004	Joseph D. Rippolone	67067-012	4762
26096 7590 11/16/2007 CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			EXAMINER GILBERT, WILLIAM V	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 11/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/787,429	Applicant(s) RIPPOLONE, JOSEPH D.	
	Examiner William V. Gilbert	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,3,5-10 and 12-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,5-10 and 12-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 august 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

This is a non-final action. Claims 1, 4 and 11 have been cancelled. Claims 2, 3, 5-10 and 12-16 are pending.

***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "non-linear air flow passages" Claim 7, line 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of

the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bortugno (U.S. Patent No. 5,503,219).

Independent Claim 12: Bortugno discloses a gutter section having a gutter section with a liquid passage (see "A" from attached Fig. 5 from Bortugno below) an air flow passage ("B" below), a gutter wall separating the liquid passage and the air flow passage, the gutter wall has two spaced apart side walls

(16) and a bottom wall (23) that define the liquid passage, and the air flow passage extends through the bottom wall (see portion 29 that extends through the bottom wall (23)). Applicant should respectfully note that the limitation "molded" line 1 indicates method steps and only the final product, the gutter section, is provided with patentable weight.

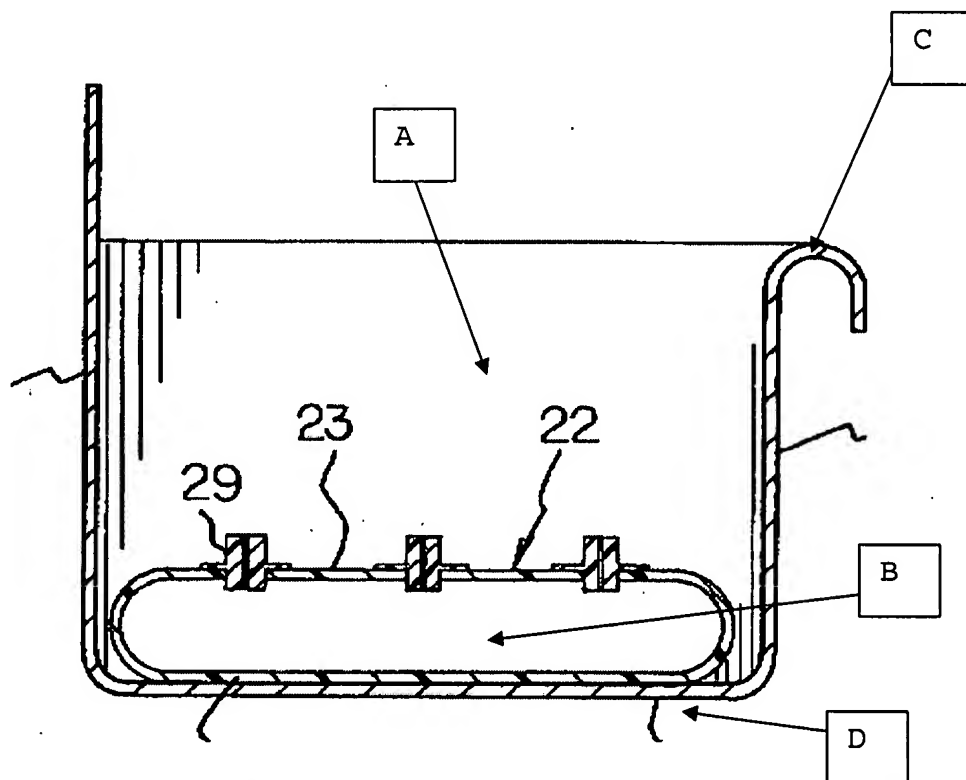


Figure 5 from Bortugno

Claim 2: the air flow passage extends within the bottom wall (see portion 29).

Claim 13: the airflow passage is parallel to the liquid flow passage (see Fig. 5, generally).

Claim 14: the gutter wall is common wall (portion 23) that at least partially defines the liquid passage and the airflow passage.

Claim 15: the gutter wall (portion 16) includes a solid body extending between a continuous upper surface ("C" above) and a continuous lower surface ("D" above).

Claim 16: the air flow passage extends through the solid body (Fig. 2: proximate 17) and is spaced apart from the upper surface and lower surface (the lower surface should be noted as the "exterior portion" and portion 24 spaces the air flow passage from the support and lower surfaces.)

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortugno.

Claims 3, 5 and 6: the prior art of record discloses the claimed invention except that the air flow passage is a multiple of air flow passages. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04. Further while the portions seem linear (as shown in Fig. 2), the prior art of record does not disclose that the members are non-linear. It would have been obvious at the time the invention was made to a

person having ordinary skill in the art as a matter of design choice to have this limitation because a configuration of an invention is a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed subject matter was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See MPEP §2144.04.

Claim 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortugno in view of Bernardi (U.S. Patent No. 3,431,972).

Claims 7 and 8: Bortugno discloses a gutter thawing system (Fig. 5) having a gutter section with a liquid passage ("A" above) and an air flow passage ("B" above) and a hot air supply (12). Bortugno does not disclose multiple of air flow passages or a multiple of gutter sections. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04. Further, Bortugno discloses the air passages as linear, but not



nonlinear. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because a configuration of an invention is a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed subject matter was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See MPEP §2144.04. Further, Bortugno discloses an input connector (27), but not a return connector and the communication of the limitations as claimed. Bernardi discloses a thawing system where the heating unit (Fig. 2) has an input and return (see Fig. 2, generally where the heating system is cyclic as shown, which results in an input and return.) It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the system in Bernardi with the air flow passage in Bortugno because the systems are functionally equivalent and would perform equally as well. The Applicant should respectfully note that the term "molded" relates to a process for making the apparatus and only the final product, the apparatus, is provided patentable weight.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortugno in view of Bernardi as applied to claim 8 above, and further in view of Hamjy (U.S. Patent No. 2,240,851).

Claims 9 and 10: the prior art of record discloses the claimed invention except for the use of a manifold and a fan. Hamjy discloses a heating system that uses a manifold system and a fan (page 1, right column, lines 12-40). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use a manifold and fan in conjunction with the system in Bortugno in view of Bernardi because manifolds are well known in the art for allowing the distribution of air flow in multiple directions and fans are well known in the art for aiding in the increase of air flow. The phrase "to raise a pressure of an airflow from said hot air supply to said manifold to above atmosphere" Claim 10, is a statement of intended use of the claimed invention and must result in a structural difference between the prior art of record and the claimed invention. If the prior art is capable of performing the limitation, then it meets the claim.

*Response to Arguments*

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Objection to the Drawings

Applicant's amendment to the drawings overcome the objection and it is withdrawn.

Rejection under 35 USC §112

Applicant's amendment to the specification overcomes the rejection and it is withdrawn.

*Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Adamic (U.S. Patent No. 3,795,271); Johnson (U.S. Patent No. 4,699,316).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

Application/Control  
Number: 10/787,429  
Art Unit: 3635

Page 11

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG

*Barbara K. Kline*  
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11/13/07